

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDRE BANKS,

Petitioner,

v.

T. LaVALLEY,

Respondent.
-----X

11-cv-4437 (NSR) (PED)

ORDER ADOPTING REPORT
AND RECOMMENDATION

NELSON S. ROMÁN, United States District Judge

Before the Court is Magistrate Judge Paul E. Davison's Report and Recommendation ("R & R"), dated October 9, 2013, on petitioner Andre Banks's ("Petitioner") petition for a writ of *habeas corpus*, pursuant to 28 U.S.C. § 2254. Judge Davison recommends that the Court deny the petition in its entirety. Petitioner has filed no objections to the R & R. For the reasons stated below, this Court adopts Judge Davison's R & R as the opinion of the Court, and denies Petitioner's petition for a writ of *habeas corpus*. The Court presumes familiarity with the factual and procedural background of this case.

When a claim has been adjudicated on the merits in a state court proceeding, a prisoner seeking habeas relief must establish that the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1); *Cousin v. Bennett*, 511 F.3d 334, 337 (2d Cir. 2008). A state court's findings of fact are presumed correct unless the petitioner rebuts the presumption with clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

A magistrate judge may "hear a pretrial matter [that is] dispositive of a claim or defense" if so designated by a district court. Fed. R. Civ. P. 72(b)(1); *accord* 28 U.S.C. § 636(b)(1)(B).

Where a magistrate judge issues a report and recommendation,

[w]ithin fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings or recommendations as provided by rules of court. *A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.* A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b) (emphasis added); *accord* Fed. R. Civ. P. 72(b)(2), (3). However, the district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985); *accord* *Feehan v. Feehan*, No. 09 Civ. 7016 (DAB), 2011 WL 497776, at *1 (S.D.N.Y. Feb. 10, 2011); *see also* Fed. R. Civ. P. 72 advisory committee note (1983 Addition, Subdivision (b)) (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

Here, the R & R was issued on October 9, 2013, and the initial deadline for filing objections was October 28, 2013. The Court twice granted Petitioner’s requests for extensions of time to file objections, which time was extended through March 10, 2014. However, since Petitioner failed to file objections, the Court has reviewed Judge Davison’s R & R for clear error. The Court finds that there is no clear error in Judge Davison’s R & R and accordingly, accepts the R & R as the opinion of the Court.

Conclusion

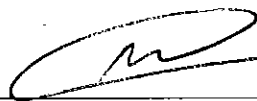
The Court adopts Magistrate Judge Davison’s Report & Recommendation in its entirety. The petition for a writ of habeas corpus is, therefore, DENIED. The Clerk of the Court is instructed to enter judgment accordingly.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529

U.S. 473, 483-84 (2000). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Dated: April 9, 2014
White Plains, New York

SO ORDERED:

 4/9/14

NELSON S. ROMÁN
United States District Judge